charge for new customer orders should be greater than for conversion orders.[57] *This testimony is not relevant to the issue before the Arbitrators. Rather, the relevant inquiry would be the operational differences between electronic ordering of resold services and the electronic ordering of UNE loops. SWBT's witness was cross-examined on this precise subject by counsel for AccuTel at the hearing.*[58] *Mr. Buehner testified that he had not undertaken such a comparison.*[59] *However, SWBT's witness testified that electronic orders for UNEs do not use the EASE electronic gateway used for resale orders because "...it's my understanding that EASE is used because they're all simple—they're mostly simple orders. But when we're talking about UNEs, those services can be more complex."*[60] *This testimony suggests that the processing of UNE orders may be more involved than the processing of new orders for simple resale service. Assuming that the electronic processing of an order for resale services is no more complex than the electronic processing of a UNE order, no SWBT witness could cite a cost-based justification for a higher charge for ordering a resale service.*[61]

Federal precedent addressing OSS is clear and unambiguous. Section 251(c)(3) of the FTA establishes the legal requirement for the ILEC to provide any requesting telecommunications carrier with nondiscriminatory access to network elements on an unbundled basis. In its First Report and Order, the FCC determined that the OSS must be unbundled since it is a "network element."[62] *In its Third Report and Order, the FCC reaffirmed its earlier determination that five functions of OSS that ILECs must make available to competitors on an unbundled basis are pre-ordering, ordering, provisioning, repair and maintenance, and billing.*[63] *The Arbitrators concur with the analysis of AccuTel that unbundled OSS must be priced at TELRIC, based on the First Report and Order.*[64] *In resolving this Arbitration, the Arbitrators*

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[57] Direct Testimony of Roman A. Smith, SWBT Ex. 2 at 7.

[58] Tr. at 68-81(Nov. 28, 2001).

[59] *Id.* at 79.

[60] *Id.* at 78.

[61] *Id.* at 119.

[62] First Report and Order at ¶ 516.

[63] UNE Remand at ¶ 425; citing First Report and Order at ¶¶ 518 and 523.

[64] First Report and Order at ¶¶ 672-707 as discussed in Direct Testimony of Candice Clark, AccuTel Ex. 1, at 6, lines 8-13. Ms. Clark stated as follows: "The TELRIC pricing standard was established by the FCC in its First

are bound by the provisions of Section 252(c) and (d) of the FTA. These provisions require that resolution of the open issue of the pricing for the electronic ordering of resale services shall be based on the cost of the network element and shall be nondiscriminatory.[65]

The federal determination that the OSS ordering function is a UNE does not change based upon the nature of the order being processed.[66] *The ordering function of OSS must be provided to the CLEC under just, reasonable, and nondiscriminatory terms and conditions.*[67] *As noted earlier, SWBT could not justify a different charge for electronic service order processing based on whether the order was for resale or a UNE.*[68] *If the Arbitrators sided with SWBT and found that the electronic service order charge must be based upon the avoided cost discount off the retail price for manual service orders, such a precedent would be a significant move away from a truly competitive market for local telecommunications service.*[69] *The discounted manual rate applied to electronic orders would place artificial economic barriers in the way of those CLECs desiring to gain efficiencies through use of advancing technology in this field. The basic pro-competitive policies giving rise to the unbundling of OSS provide support for reaching the conclusion that the appropriate charge for unbundled electronic service order processing in this case should be $2.58.*

Although SWBT cited the Mega-Arbitration case to generally support its position, portions of the record in that case provide clear support for applying the $2.58 charge for electronic service orders for resold services. For instance, in a December 1, 1997 letter to all parties of record in the Mega-Arbitration, the Commission's Administrative Law Judge (ALJ) attached the pricing scenarios and rate sheets considered by the Commission at that day's Open Meeting. In addition to providing examples of recurring and non-recurring charges relating to orders for UNEs, the attachment provided scenarios for the conversion of total-service-resale customers and the provision of ISDN to a new customer using total-service resale. In the cases

Report and Order, ¶¶ 672-707, and is the principle followed by this Commission in setting UNE rates in the T2A, which 1-800-4-APHONE and SWBT have adopted as their interconnection agreement for UNEs."

[65] FTA § 252 (d).

[66] First Report and Order at ¶¶ 517 and 525.

[67] *Id.*

[68] Tr. at 119 (Nov. 28, 2001).

[69] UNE Remand at ¶ 434.

of both converted customers and new customers, the pricing scenarios showed service-order charges of no greater than $2.56 per order.[70]

The December 1, 1997 open-meeting transcript provides further evidence that the Commission believed that it was adopting service-order charges that would apply not just to orders for UNEs, but also for resold services. Chairman Pat Wood made the following observations:

> I did notice one charge that ought to help, not only UNE purchases but resale, is the cost-base service order charge that's about half of what we had been doing. It was $5 and now it's $2.56, and I think when transaction charges are reduced, then you will have some fluidity – more fluidity in the market and customers will be more and their providers, will be more incented to change things and correct things and get things done.
>
> And the $2.56 rate, I think, ought to help both UNE and resale [and] will be a much more workable environment and, again, was based on good solid evidence in the record as to what kind of fail percentages can normally be expected on these electronic interfaces.[71]

The Phase-II Mega-Arbitration Award, issued on December 19, 1997, further indicates that the Commission intended for cost-based service-order charges to apply not only to orders for UNEs, but also to orders for resale. In Appendix B (Rate Sheet) of that Award, the category "Service Order Charges – Unbundled Elements" specifies charges of $2.58 for "New Simple," $2.56 for "Change Simple," and $2.56 for "Suspend/Restore Simple." The category "Conversion Order Charges for Resold Services" in Appendix B also lists a $2.56 charge for both "Mechanized Simple" and "Simple Manual."[72] *Additionally, in Appendix C (Clarification Issues) the issue "Service order charges for changes in features for resale customers" states that "Generally, the only change charge to apply will be $2.56 for simple and $62.56 for complex resale conversions."*[73]

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[70] Docket No. 16189 *et al*, Letter from ALJ Kathy Hamilton to all parties of record at 1, 2, and 9 (Dec. 1, 1997).

[71] Open Meeting Tr. at 34-35 (Dec. 1, 1997).

[72] Docket No. 16189 *et al*, Phase II Award, Appendix B at 12-13. Significantly, the cited rates, including the $2.58 for "New Simple" services, are consistent with those in the T2A.

[73] Docket No. 16189 *et al*, Phase-II Award, Appendix C at 5 (Dec. 19, 1997). Under the issue "Conversion Order Charges for Resold Services" in Appendix C, the Commission also notes that conversion order charges "apply to resold services, not UNEs."

SWBT contended that ¶ 55 of the Commission's Phase-I Mega-Arbitration Award provides support for its conclusion that the 21.6% avoided-cost discount took into consideration the avoided costs associated with the electronic processing of orders.[74] *This conclusion is unwarranted. That paragraph of the Award states as follows:*

> Ninety percent (90%) of the expenses in sales (account 6612) and product advertising (account 6613) are presumed avoided. Eighty percent (80%) of the expenses in product management (account 6611) and customer services (account 6623) are presumed avoided. The record demonstrates that there will be some product management, sales, product advertisement, and customer service expenses incurred to serve wholesale customers.[75]

Although SWBT cited the second sentence of ¶ 55 to support its contention, that sentence provides no such support. It says nothing about the specific services for which product-management and customer-service expenses will be avoided by SWBT, let alone mentioning the use of electronic processes by CLECs in submitting resale orders to SWBT. There is no indication that the Commission was even contemplating a discount to apply to service orders at all (derived by excluding avoided costs associated with the placement of service orders, as opposed to the provision of ongoing service to end users). Additionally, even if the Commission was considering avoided costs associated with service orders, there is no reference made to the avoidance of costs related to electronically placed orders, as opposed to manually placed orders.[76] *The Arbitrators agree with AccuTel that "[t]he paragraph contains no suggestion that the Commission considered electronic order processing as a source of avoided costs."*[77] *To the extent that the calculation did not account for the avoidance of costs due to the electronic processing of orders, any discount that did account for such costs would have to be greater than the 21.6% discount established by the Commission.*

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[74] SWBT's Initial Brief at 9.

[75] Docket No. 16189 *et al*, Phase-I Mega-Arbitration, Award at ¶ 55.

[76] SWBT tends to avoid significant customer-service costs even when a CLEC submits a manual service order, because the SWBT service representative does not need to spend time interviewing the CLEC's customer. SWBT avoids still more costs when the CLEC properly submits an electronic order via SWBT's EASE system, as the SWBT service representative then needs not even to type the customer's order into the computer.

[77] AccuTel Reply Brief at 6.

SWBT stated that "[t]his reasoning was developed by the FCC in the First Report and Order, ¶ 917."[78] *Yet that paragraph provides no more support for SWBT's contention than does ¶ 55 of the Commission's Mega-Arbitration Award. In finding that all costs recorded in accounts 6611, 6612, 6613, and 6623 are presumed to be avoidable, ¶ 917 states that "The costs in these accounts are the direct costs of serving customers." It does not discuss any underlying analysis.*

V. CONCLUSION

The Arbitrators conclude that $2.58 is the amount that Southwestern Bell Telephone Company of Texas (SWBT) shall charge AccuTel of Texas, Inc., dba 1-800-4-A-PHONE (AccuTel) for the processing of electronic orders of resold services to new or suspended customers. Therefore, the current interconnection agreement between AccuTel and SWBT should be amended to provide that $2.58 is the amount that SWBT shall charge AccuTel for the processing of electronic orders of resold services to new or suspended customers.

The Arbitrators establish the following schedule for compliance and comments.

Due date for parties to submit interconnection agreement (ICA) with conforming language:	February 4, 2002
Date for publication in the Texas Register:	February 15, 2002
Due date for comments on ICA:	March 1, 2002
Date for Arbitrators' memo addressing comments:	March 18, 2002

[78] SWBT Initial Brief at 9, footnote 28.

SIGNED AT AUSTIN, TEXAS the 25th day of JANUARY, 2002.

FTA § 251 PANEL

M A Gentle

Mark Gentle
ARBITRATOR

Rick Akin

Rick Akin
ARBITRATOR

Staff Arbitration Team Members:

Jingming Chen
John Costello
Nara Srinivasa

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ATTACHMENT 1

Final DPL

November 27, 2001

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ARBITRATION FOR INTERCONNECTION BETWEEN 1-800-4-A-PHONE AND SOUTHWESTERN BELL TELEPHONE COMPANY	§ § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

SOUTHWESTERN BELL TELEPHONE COMPANY'S
AMENDED DECISION POINT LIST

Southwestern Bell Telephone Company (SWBT) files this Amended Decision Point List (DPL), which includes the parties' positions for the seven issues.

Respectfully submitted,

ANN E. MEULEMAN
General Counsel-Austin

Cynthia F. Malone

Cynthia F. Malone
Senior Counsel
State Bar No. 12872500

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CERTIFICATE OF SERVICE

I, Cynthia F. Malone, Senior Counsel for Southwestern Bell Telephone Company, certify that a true and correct copy of this document was served to all parties of record on November 27, 2001, via U.S. mail, facsimile, or overnight delivery.

Cynthia F. Malone

DOCKET 24547- AccuTel Amended DPL

Issue No.	Issue	AccuTel Position and Language	SWBT Position and Language
1	Whether the functions provided by SWBT to 1-800-4-A-Phone in processing service orders via an electronic gateway are resold services or unbundled network elements.	UNE	SWBT is processing invoice orders via various electronic gateways as both resold services and UNE's. The prices AccuTel receives are dependent upon whether AccuTel submits a resold service order or a UNE Service order. See Direct Testimony of Roman A. Smith, p. 9, ll. 3-12.
2	Whether the rate for the OSS functions SWBT provides to 1-800-4-A-Phone to process its service orders should be based on an avoided cost discount, on TELRIC, or on some other pricing standard.	TELRIC	SWBT does not charge CLECs for connectivity or access to OSS functions at this time. Direct Testimony of Roman A. Smith, p. 10, ll. 1-5.
3	Whether the services in Southwestern Bell's General Exchange Tariff Section 27, Sheets 1-5 correspond to the functions provided by SWBT to 1-800-4-A-Phone in processing service orders via an electronic gateway.	No	The services outlined in SWBT's tariff correspond to the functions provided by SWBT in processing service orders via an electronic gateway. Direct Testimony of John Buehner, p. 3, ll. 4-7. Retail service orders are processed electronically through EASE. Resale services can be processed through EASE and also thru LEX and EDI. Rebuttal of John Buehner, p. 4, ll. 4-15. Resale services are based upon retail services available in the tariff. In this instance, the avoided cost discount for electronic orders has been applied to the retail service order charge. Direct Testimony of Roman A. Smith, p. 10, ll. 6-13.

4	Whether SWBT's "Electronic Service Order – LEX, EDI, EASE-Rate Analysis" accurately reflects the current costs of electronic service order processing and develops the rates for these functions in a way consistent with federal law and rules.	No	Consistent with the FCC First Report and Order, the rate analysis in the Electronic Service Order – LEX, EDI, Ease-Rate Analysis was performed using the avoided cost methodology in order to develop a resale rate based upon the retail costs that would be avoided if the service was provided on a wholesale basis. The FCC recognized this as an appropriate costing methodology for resold services. Direct Testimony of John Buehner, p. 7 ll. 15-26, p. 8, ll. 1-13.
5	Whether the avoided cost discount adopted in the MegaArb, and incorporated in the AccuTel/SWBT Resale Agreement should be altered or changed in this proceeding.	AccuTel is not requesting this relief and does not agree that this is a pending issue.	No, This Commission has already adopted and approved the 21.6% avoided cost discount for eligible retail-based services for resale carriers in Texas. The FCC Order does not permit a CLEC to have some resale prices based upon a service-specific discount while other prices are based on an aggregate discount for all services. Direct Testimony of Roman Smith, p. 4 ll. 18-21, p. 5, ll. 1-9. AccuTel agreed in November of 1999 to abide by the terms, conditions, and prices of a five (5) year contract. Direct Testimony of Roman Smith, p. 8, ll. 22-23.
6	Whether the Commission has the authority to insert or change language to an existing interconnection agreement between SWBT and AccuTel by ordering an amendment.	AccuTel is not requesting this relief and does not agree that this is a pending issue.	The current agreement in dispute has a term of five (5) years. Southwestern Bell and AccuTel entered into this Resale Agreement on November 10, 1999. This Agreement was completely negotiated, and signed by this Commission on January 12, 2000. The Commission has played its role by approving this Agreement on January 12, 2000. Direct Testimony of Roman Smith, p. 3, ll. 21-24, p. 4, ll. 1-6.

7	What is the appropriate charge for SWBT's electronic processing of new resale service orders?	$2.58	Currently, the appropriate charge for SWBT's electronic processing of new resale service orders is $14.96. This is derived by subtracting from the retail tariffed rate of $22.00 the appropriate avoided cost discount of 32%, which provides a cost of $14.96. Rebuttal Testimony of Roman A. Smith, p. 3, ll. 13-25.

EXHIBIT F

EXHIBIT F

PSC REF#:117491

Public Service Commission of Wisconsin

Eric Callisto, Chairperson
Mark Meyer, Commissioner
Lauren Azar, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

July 28, 2009

Mr. K.C. Halm
Davis Wright Tremaine LLP
Suite 200
1919 Pennsylvania Ave. NW
Washington, DC 20006

Mr. Bradley D. Jackson
Foley & Lardner LLP
150 East Gilman Street
Madison, WI 53703

Re: Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Non-Rural Telephone Companies of Wisconsin and Charter Fiberlink, LLC — 5-MA-148

Dear Sirs:

Enclosed please find the arbitration award in the above captioned matter.

Sincerely,

Dennis J. Klaila
Chair
Arbitration Panel

DK:dl:\5-MA-148\correspondence\5-MA-148 award cover letter

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Non-Rural Telephone Companies of Wisconsin and Charter Fiberlink, LLC	5-MA-148
Petition of Charter Fiberlink, LLC for Arbitration of an Interconnection Agreement Between the CenturyTel Rural Telephone Companies of Wisconsin and Charter Fiberlink, LLC	5-MA-149

ARBITRATION AWARD

This is the final decision and arbitration award in the arbitration proceeding between Charter Fiberlink, LLC (Charter) and twelve CenturyTel operating companies of Wisconsin (CenturyTel).

Proceedings

On July 21, 2008, Charter petitioned the Commission for arbitration of an interconnection agreement with CenturyTel, pursuant to 47 U.S.C. § 252(b)(1).[1] Charter submitted two petitions for arbitration. The first petition requested arbitration of an interconnection agreement with CenturyTel's non-rural operating companies in Wisconsin (CenturyTel of the Midwest-Kendall, LLC; CenturyTel of Central Wisconsin, LLC; and Telephone USA of Wisconsin, LLC). The second requested arbitration of an agreement with the rural operating companies (CenturyTel of Fairwater-Brandon-Alto, LLC; CenturyTel of Forestville, LLC; CenturyTel of Larsen-Readfield,

[1] Hereafter, simple references to § 251, § 252 and other sections without a title reference shall mean sections of Title 47 of the United States Code. Similarly, references to a Rule shall mean the corresponding section of Title 47 of the Code of Federal Regulations. References to "the Act" shall mean the Telecommunications Act of 1996, Public Law 104-104, 110 Stats. 56 (1996), codified at scattered sections of Title 47, United States Code.

LLC; CenturyTel of Monroe County, LLC; CenturyTel of Northwest Wisconsin, LLC, CenturyTel of Northern Wisconsin, LLC; CenturyTel of Southern Wisconsin, Inc.; CenturyTel of the Midwest-Wisconsin, LLC; and CenturyTel of Wisconsin, LLC). Because of the similarity of the issues and parties, the two petitions have been combined in a single proceeding.

CenturyTel filed its reply to Charter's petitions on August 15, 2008. On September 25, 2008, the Commission issued a Notice of Arbitration, appointing an arbitration Panel consisting of Dennis Klaila (chair), Anne W. Waymouth and Duane Wilson. The Commission appointed Michael Varda to serve as legal advisor to the Panel. The notice also provided that the Commission would apply the Commission's *Interim Procedures*.[2]

The arbitration hearing was held in Madison on December 9-10, 2008. The parties filed initial briefs on January 14, 2009, and reply briefs on January 29, 2009.

Parties

Charter is a Delaware limited liability company, with its primary place of business at 12405 Powerscourt Drive, St. Louis, MO 63131. Charter has a Certificate of Authority issued by the Commission that authorizes Charter to provide local exchange service and exchange access service in designated exchanges in Wisconsin, including within the affiliated incumbent service areas of CenturyTel. Under Wisconsin law, Charter is an alternative telecommunications utility under Wis. Stat. § 196.01(1d)(f). Under federal law, Charter is a telecommunications carrier for purposes of § 153(49) and a requesting telecommunications carrier for purposes of §§ 251(c)(1) and 252(a).

[2] Investigation of the Implementation of the Telecommunications Act of 1996 in Wisconsin, No. 05-TI-140 (Wis. PSC, May 23, 1996) (*Interim Procedures*).

CenturyTel, Inc. is a holding company and the parent utility for the twelve CenturyTel affiliated companies involved in this arbitration proceeding. The principal office address for CenturyTel, Inc. is 100 Century Park Dr., Monroe, LA 71203-2041. The twelve CenturyTel operating companies of Wisconsin provide local exchange, exchange access and other services as incumbent telephone companies within certain parts of Wisconsin. Under Wisconsin law, the CenturyTel operating companies are telecommunications utilities as defined in Wis. Stat. § 196.01(10). Under federal law, the CenturyTel operating companies are telecommunications carriers for purposes of § 153(49), and Incumbent Local Exchange Carriers (ILECs) for purposes of § 251(h). CenturyTel rural operating companies retain an exemption, as provided for in §251(f)(1)(A), from the additional obligations applicable to ILECs contained in § 251(c).

Issues

Charter initially submitted a disputed points list (DPL) consisting of 40 issues plus sub-issues. See Exhibit C of Charter's Petition for Arbitration, dated July 21, 2008. Also submitted, as Exhibit B of Charter's Petition for Arbitration, is the parties' draft interconnection agreement with competing proposed language. CenturyTel initially submitted a DPL consisting of 43 issues plus sub-issues. See Exhibit 2 of the CenturyTel Response to Charter's Petitions for Arbitration, dated August 15, 2008. These two DPL's indicated that Issues 18, 19, 20, 34, 35, 37, 38, 39, and 40 only apply to CenturyTel non-rural operating companies. On September 15, 2008, the Parties filed a Joint Revised Statement of Unresolved issues in both dockets 05-MA-148 and 05-MA-149 consisting of 43 issues plus sub-issues. However, the parties did not agree on the wording of each issue and included competing sets of wording for many of the issues. On December 3, 2008, the parties filed a Joint Revised Statement of Unresolved issues which indicated Issues 1, 6, 9, 26, 27, 31, 36, and 42 were resolved. Also on November 7, 2008, prior to the hearings, the parties jointly filed a statement to inform the Commission that Issues 5, 10, 12, 15(A), 15(B), 15(C), 27, 32, 37, 38, 39, and 40 would be addressed by the parties only in post-hearing briefs.

To the extent the parties did not agree on the wording of an issue, the discussion below provides both versions of the issues with an identification as to which version is Charter's version and which version is CenturyTel's version. Where the parties agree on the wording of an issue, that single description of the issue is included. In some cases the proposed contract language associated with each issue identified in the DPL includes language that is unrelated to the specific issue at hand and contains terms relevant to different issues. For example, see Issue 18. In those circumstances, in the discussion below, the Panel identifies the language it considers to be relevant to the issue at hand. Charter's proposed language is shown in **bold**. CenturyTel's proposed language is double underlined. On most issues, the Panel awards either Charter's or CenturyTel's proposed contract language, potentially with a few edits. However, in some cases, in particular where issues overlap, the Panel describes its award and leaves the redrafting of the contract to the parties.

Discussion of the Issues

Issue 1: Resolved.

Issue 2: How should the Agreement define the term Network Interface Device or "NID"?

Issue 25: Charter version: Should Charter have access to the customer side of the Network Interface Device ("NID") without having to compensate CenturyTel for such access?

CenturyTel version: CenturyTel believes that there are two issues presented in Issue 25:
(a) Should Article IX, Section 3.4 clarify that the End User controls Inside Wire except in those multi-tenant properties where CenturyTel owns and maintains such Inside Wire?

(b) Is Charter required to submit an order to and pay CenturyTel for accessing CenturyTel's NID when Charter connects its loop to the End User's Inside Wiring through the customer access side of the CenturyTel NID?

These issues concern the definition of the Network Interface Device (NID) and the terms for access to and ordering the NID as an unbundled network element (UNE). These proposed definitions and procedures implicate whether Charter uses CenturyTel's NID as a UNE such that Charter should compensate CenturyTel for that use.

Positions of the Parties

(a) Charter

Charter believes that it should be allowed to access the customer side of the NID, for the purpose of connecting its own loop facilities to the customer's inside wire. Charter believes such access does not constitute the use of the NID as an UNE and does not create any obligation for Charter to compensate CenturyTel.

(b) CenturyTel

CenturyTel believes that Charter uses CenturyTel's NID by connecting Charter's line to the customer's inside wire through the customer access side of CenturyTel's NID. CenturyTel believes Charter is using CenturyTel's NID as a UNE such that Charter should follow the appropriate ordering process, including paying CenturyTel's Service Order charge, Outside Facility Connection charge, and monthly NID UNE charge. CenturyTel also proposes specific language concerning multi-tenant properties.

Proposed Contract Language

Charter and CenturyTel each propose language for Art. II section 2.103; Art. VI sections 3.4, 3.5 and 3.51; and Art. XI (Pricing) with respect to the "Outside Facility Connection" charge.

2.103 **Network Interface Device (NID)**

A stand-alone Network Element defined as any means of interconnecting Inside Wiring to CenturyTel's distribution plant, such as a cross-connect device used for that purpose. The NID houses the protector, the point from which the Point of Demarcation is determined between the loop (inclusive of the NID and the End User Customer's Inside Wire pursuant to 47 CFR 68.105. For purposes of this definition, the phrase "End User Customer's side of the NID" is descriptive and does not convey any ownership or usage rights.

3.4 Except in those multi-unit tenant properties where CenturyTel owns and maintains control over inside wire within a building, mMaintenance and control of the End User Customer's inside wiring (*i.e.*, on the End User Customer's side of the NID) is under the control of the End User Customer. Conflicts between telephone service providers for access to the End User's inside wire on the End User's side of the NID must be resolved by the End User.

3.5 Charter may obtain unbundled access to the NID on CenturyTel's network side or the End User Customer's side on a stand-alone basis to permit Charter to connect its own loop facilities to the premises wiring at any customer location. Charter may not connect the End User Customer side of the NID except in accordance with these terms. Any repairs, upgrade and/or rearrangements to the NID requested or required by Charter will be performed by CenturyTel based on the Time and Material Charges set out in Article XI (Pricing). CenturyTel, at the request of Charter, will disconnect the CenturyTel Local Loop from the NID, at charges reflected in Article XI (Pricing). Charter may elect to disconnect CenturyTel's Local Loop from the NID on the customer's side of the NID, but Charter shall not perform any disconnect on the network side of the NID. Under no circumstances, however, shall Charter connect to either side of the NID unless the CenturyTel network is first disconnected from the NID as set forth in this Article.

3.5.1 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the Inside Wiring of a customer's premises through the customer side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for access to the CenturyTel NID.

3.5.21 Notwithstanding any other provision of this Agreement, when Charter is connecting a Charter provided loop to the CLEC provided interface device (i.e. terminal equipment) to the Inside Wiring of a customer's premises without connecting to the End User Customer side of the CenturyTel NID, Charter does not need to submit a request to CenturyTel and CenturyTel shall not charge Charter for the processes described herein.

II. UNE PRICING

Network Interface Device (stand alone)	MRC
Basic NID	$1.30
Complex (12 x) NID	$1.40

Network Interface Devise (stand alone)	NRC
Initial Service Order (ISO)	$33.38
Outside Facility Connection	$43.69

Application of UNE Pricing
"Initial Service Order" (ISO) applies to every Local Service Request (LSR) for NIDs.

"Outside Facility Connection" applies in addition to the ISO charge when incremental fieldwork is required, **and where **CLEC specifically requests that CenturyTel perform such incremental fieldwork.**

Discussion

While the Federal Communications Commission's (FCC) rules provide some guidance on this issue, the rules are not fully dispositive of this issue. The relative emphasis given to particular words in the FCC rules affects the application of the rules to this particular situation. Furthermore, as the parties have chosen to submit a contract dispute to the Commission for adjudication, Wis. Stat. § 199.199 applies, as do other pertinent provisions of Wis. Stat. ch. 196, as provided in the notice these dockets.

The relevant FCC rules are as follows:

Part 51 INTERCONNECTION
§ 51.309 Use of unbundled network elements.
(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.

51.319 Specific Unbundling Requirements
(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end- user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(c) *Network interface device.* Apart from its obligation to provide the network interface device functionality as part of an unbundled loop or subloop, an incumbent LEC also shall provide nondiscriminatory access to the network interface device on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. The network interface device element is a stand-alone network element and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-

> premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.
>
> PART 68--CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK
> **§ 68.105 Minimum point of entry (MPOE) and demarcation point.**
> (a) Facilities at the demarcation point. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to the technical criteria published by the Administrative Council for Terminal Attachments.
> (b) Minimum point of entry. The "minimum point of entry" (MPOE) as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The reasonable and nondiscriminatory standard operating practices of the provider of wireline telecommunications services shall determine which shall apply. The provider of wireline telecommunications services is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.
> (c) Single unit installations. For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of where the telephone wire enters the customer's premises, or as close thereto as practicable.
> (d) Multiunit installations. (1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and non-discriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises, or as close thereto as practicable.

The parties place different emphasis on particular words in the FCC rules in making their arguments. CenturyTel's arguments focus on the phrase where an ILEC allows a CLEC "to connect its own loop facilities to on-premises wiring *through* the incumbent LEC's network interface device" 47 C.F.R. § 51.319(c) (emphasis added). CenturyTel believes any time Charter houses its connection within any part of the NID, it is connecting its loop facilities *through* CenturyTel's NID. CenturyTel also refers to the language in 47 C.F.R. § 68.105(c) that permits the demarcation point to vary depending on the type of premise, *i.e.*, single unit or multiunit, and the date the premises was built. For single unit dwellings "the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of where the telephone wire enters the customer's premises, or as close thereto as practicable." CenturyTel believes this demonstrates that CenturyTel owns and controls the NID in its entirety, including the facilities (i.e. wiring) up to the demarcation point. Thus the entire NID falls within the CenturyTel network. CenturyTel asserts that "[t]he NID is not the Point of Demarcation in single unit installations, but it contains the protector which the FCC utilizes in its rule to determine the Point of Demarcation apart from the NID." [3]

CenturyTel points out that any end user customer access to a portion of the NID is controlled by tariff and when a customer terminates service, the customer no longer has the right to access CenturyTel's NID. The NID remains the property of the telephone company. CenturyTel says that Charter is using CenturyTel's NID as a convenient weather-protected box within which to connect a Charter wire to the customer's inside wire and such use constitutes use as a UNE. CenturyTel believes it does not matter whether Charter chooses to use only part of the NID. There is no partial use of a UNE at a discounted price. CenturyTel refers to 47 C.F.R. § 51.519(h) in asserting a price for a NID UNE is established on a "stand-alone basis." CenturyTel asserts that Charter uses CenturyTel's NID to avoid the cost of deploying NIDs and thus Charter must compensate CenturyTel for the use by paying the applicable UNE charges. CenturyTel believes there is no exemption from this requirement. CenturyTel believes that adoption of Charter's position in this case would be an unconstitutional taking of CenturyTel's property without compensation.

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[3] CenturyTel Int. Br. p. 22